IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLN.NO.713 OF 2007

Raju @ Ashraf Askar Shaikh ..Applicant

Vs.

State of Maharashtra ..Respondents

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Mr.S.S.Khan counsel for applicant
Mr.Rajesh More A.P.P. for the State

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CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : MARCH 22, 2007

P.C.

1. Heard the learned counsel for the applicant and the learned A.P.P. for the State.

2. The applicant is seeking bail in C.R. No.I-136 of 2006 of Manikpur Police Station. The said case is under Sections 395 and 397 of IPC.

3. It is the prosecution case that the applicant along with other co-accused entered into the house of the complainant at about 2.45 a.m. armed with iron rods and other weapons. They broke open the latch of the house of the complainant and entered into the house and committed theft of articles.

The applicant has been identified by the daughter of the complainant in the test identification parade.

4. The learned counsel for the applicant has submitted that the investigation in the present case is over and charge sheet has been filed. He has submitted that case is entirely dependent on the identification of the applicant in the test identification parade. He has further submitted that there is delay in holding the test identification parade and mandatory requirements in respect of holding the test identification parade were not complied with. In support of his contention that the mandatory requirements are not followed, hence the test identification parade cannot be relied upon, he has placed reliance on the decision of this Court in the case of **Rakesh Harilal Kahar Vs. State of Maharashtra reported in 2006(2) B.C.R. (Cri.) 533**.

5. I have perused the said decision. In the said case, the witnesses have stated in their evidence that the Special Executive Officer who conducted parade, did not ask the witness whether he had an

opportunity to see the accused or his photograph before the parade. Besides this, some other requirements were not followed by the Special Executive Officer, hence, evidence relating to identification was discarded. It is pertinent to note that in the said case, trial was conducted, the evidence was led and only after perusal of the evidence of the witnesses, this Court came to the conclusion that the test identification parade could not be relied upon. In the present case the decision relied upon, would be of no help to the applicant as the witnesses have yet to be examined.

6. As far as delay in holding the test identification parade is concerned, this is an aspect which would be gone into at the time of trial. Delay by itself would not vitiate the identification of the accused. Delay would affect the prosecution case only if the delay was not satisfactorily explained by the witnesses and it is only after the evidence is led, that one can see whether the delay has been satisfactorily explained or not. The applicant is involved in a serious offence. Hence, I do not think that this is a fit case to grant bail.

7. Application is rejected.

[V.K.Tahilramani, J.]